

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF CONCORD, CALIFORNIA**

These Comments are filed by the City of Concord, CA in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Concord believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

The City of Concord, CA (population 125,000) franchises two cable companies. Our franchised cable providers are Comcast and Astound Broadband. **Our community awarded a competitive cable television franchise to Astound Broadband in 1999.**

**Our Current Franchises**

**Astound Broadband**

Our current franchise began on July 27, 1999 and will expire July 27, 2014. Astound Broadband made initial application to the City for a franchise in February 1999. **Astound Broadband serves approximately 17,000 cable customers in Concord.**

**The City granted the franchise on July 27, 1999, which was less than six months after receipt of the company's application.** In October 2005, the City of Concord approved a transfer of the franchise from Astound Broadband to WaveBroadband of Kirkland, WA dba Astound Broadband of California. WaveBroadband accepted the terms and conditions of the 1999 franchise with mutually agreed upon non-material changes to the franchise document. The transfer request was initiated by Astound in June 2005. **The City approved the transfer of**

franchise on October 11, 2005, or four months after receipt of the request and two months after the City certified the Form 394 as complete.

The City of Concord supports competition in video services. In March 2000 Astound Broadband commenced serving customers in Concord. On March 1, 2000 the incumbent cable operator AT&T (now Comcast) introduced a cable rate increase for 65 of the 66 cable systems it operates in the San Francisco Bay Area ("Bay Area"). The increases averaged 6.4%. AT&T declined to raise cable rates in Concord on its two basic tiers of service. A March 9, 2000 article in the Oakland Tribune titled "Cable Competition Holds Prices" Business Writer Eve Mitchell wrote, "Astound's entry into the market prompted AT&T to not increase its rates in Concord for its two basic tiers of service." The article quoted Andrew Johnson, spokesman for AT&T, "It's related to the fact that we have a competitor that has joined us said Andrew Johnson, spokesman for AT&T Broadband & Internet Services."

The City of Concord has observed other benefits of wireline competition. Annual surveys conducted by the City demonstrate improved customer service ratings by cable customers in our community for cable services since the introduction of wireline competition in 2000. Complaints received by the City from cable customers have decreased. The community has received increased access to advanced digital services, high-speed Internet and telephony. The City of Concord supports competition and the City has demonstrated that the local franchising process is not an obstacle to competition as shown by the City's expeditious granting of a competitive franchise in less than six months and the approval of a franchise transfer in four months, as noted above.

Our franchise with Astound Broadband requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide 3% of bandwidth for public, educational, and governmental ("PEG") access channels on the cable system and a PEG Access Capital Payment based on 3% of gross revenues. The City currently operates one channel devoted to government access and the cable operator provides public access on another channel. The City of Concord is working with other communities in the region to establish a Community Media Center that will provide expanded PEG programming to participating communities.

Our franchise contains Institutional Network ("I-Net") requirements which include the construction of thirty-one (31) I-Net sites within the City. These sites include police department facilities, fire stations, a senior center, a pre-school, a School District Science Center and other City-operated facilities. The cable operator is required to construct up to two additional I-Net sites annually as designated by the City. I-Net facilities are used to improve police and fire communications, to provide high-speed internet services and other data services to school, city and senior center facilities, to carry live broadcasting of community events, and to carry Council meetings and Commission meetings on PEG channels.

Our franchise contains the following requirements regarding emergency alerts: "In the case of any emergency or natural disaster as determined by CITY, GRANTEE shall, upon request of CITY or emergency management personnel, make its Cable System and related facilities available to CITY during the period of the emergency or natural disaster, to provide emergency alert services consistent with Applicable Law. To provide an emergency alert capability, GRANTEE shall install and maintain an Emergency Alert System which allows CITY to simultaneously override audio and video signals and broadcast emergency messages on all television channels. In case of public emergency, CITY may, as directed by the Administrator of Emergency Services or other authorize official, activate and use such emergency override system for the duration of the emergency. The GRANTEE shall assist and cooperate with CITY in periodic testing of the emergency override system." (page 53, Franchise Agreement). These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains customer service obligations contained within the FCC customer service guidelines at Section 76.309 of Title 47 of the Code of Federal Regulations. These customer service standards include requirements for hours of operations, maintenance of a business office, telephone response times and required periodic reporting. Enforcement of the standards is by a mutually agreed upon process that includes notice to the operator and opportunity to cure prior to legislative or judicial review.

Our franchise with Astound sets out a mutually agreed upon build schedule for the cable operator. This build schedule was modified during actual construction to meet the needs of the cable company. The initial agreed upon franchise requirement, which was based on the request of the cable company, was to complete the build of the City within 18 months. This was to be done in contiguous phases termed, "Construction Segment Areas." The actual build required close to four years. The City of Concord cooperated fully to provide permitting and inspection services as needed by the company to facilitate its build-out of the City. The franchise provides a density exception for any specific mile of street which has less than thirty-six (36) dwelling units fronting thereupon, measured from the closest point of connectivity to the company's system, provided that the cable system shall be designed to reach the maximum possible number of dwelling units and to minimize the existence of any low-density exception areas. **The company built-out the city without requesting any low-density exception areas.**

In order to ensure that our residents have access to current telecommunications technologies, our franchise states, "CITY and GRANTEE acknowledge and agree that the field of cable television is rapidly changing which may see other regulatory, technical, and legal changes during the term of this Agreement. Therefore, in order to provide for the maximum degree of flexibility in this Agreement, and to help achieve a continued, advanced and modern Cable System, the following evaluation provisions will apply" (page 41, Franchise Agreement). The Agreement lays out a periodic evaluation schedule, which shall not number more than four (4) evaluation sessions during the 15-year franchise. The City and company may discuss proposed modifications for system upgrades but the Franchise Agreement does not require either party to agree to any proposed modification, "If the Proposed Modification is consistent with the terms of this Agreement, the needs of GRANTEE and CITY and existing state-of-the-art technology, including what is provided by GRANTEE in other Systems owned, operated or managed by it; or

its parent company, GRANTEE and CITY will, in good faith, review the terms of the Proposed Modification and consider amending this Agreement accordingly. **Nothing herein shall be construed as requiring either GRANTEE or CITY to agree to any Proposed Modification**" (page 43, Franchise Agreement).

Our franchise contains the following insurance and bonding requirements: a performance bond in the amount of \$700,000, which was released by the City upon completion of the system. An ongoing Security Fund in the form of a \$50,000 Letter of Credit is required. Insurance for single limit coverage applying to bodily and personal injury and property damage in the amount not less than \$2,000,000 is required.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. **Apart from the franchise, the cable provider is required to obtain construction-related permits, which are typically administrative over-the-counter nominal-fee encroachment permits to perform work in the public-rights-of-way. The encroachment permit process addresses lane-closure requirements and related safety issues.**

The franchise agreement provides enforcement mechanisms by which the City ensures that the cable operator is abiding by the agreement. These include right of audit, a dispute resolution process to address customer service, and a liquidated damages process.

Comcast (incumbent):

Our current franchise began on February 2, 1988 and expired on February 2, 2003. **Comcast serves approximately 22,000 cable customers in Concord.** Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system: one channel which carries, in part, public and educational access and one channel that is devoted to government access. The franchise contains a "trigger" mechanism for activating one additional channel, depending on need and use.

Our franchise requires that PEG channels be supported in the following ways by the cable operator: operational support at a central regional studio facility, and equipment use and playback capability. Our current negotiations include provisions for monetary support and additional PEG channels.

Our franchise contains the following requirements regarding emergency alerts: the cable operator is required to permit the City of Concord, in times of emergency, to override the audio portions of all channels and the video portion of the public access channel simultaneously by telephone or other communications medium located at the City's offices. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms agreed to in the franchise: enforcement of FCC customer service standards including but not limited to hours of operations, maintenance of a business office, telephone response times and required periodic reporting.

Our franchise with Comcast contains the following reasonable build schedule for the cable operator: the incumbent (Comcast and its predecessors) served the entire community at the time of granting of the 1988 franchise. A density exception clause allows the company to not construct energized trunk cable where there is a residential density of less than 10 existing and completed residential dwelling units per one-quarter (1/4) mile. The City recognizes that low density areas meeting this criteria may not be economically feasible for the cable company to serve.

**Comcast rebuilt our community in 1999-2002 to provide advanced digital services including telephony and Internet. This rebuild was in part a planned rebuild as well as an accelerated response to competition (see Astound Broadband above).**

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. **Apart from the franchise, the cable provider is required to obtain construction-related permits, which are typically administrative over-the-counter nominal-fee encroachment permits to perform work in the public-rights-of-way. The encroachment permit process addresses lane-closure requirements and related safety issues.**

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: right of audit, and a dispute resolution process to address customer service and other franchise requirements. **The operator is provided ample opportunity to cure prior to legislative or judicial review and action.**

### **The Franchising Process**

The cable systems serving our community also serve adjoining communities. The City of Concord has worked jointly with other LFAs in the region to process transfers and renewals as well as conduct audits. **This informal cooperation (the LFAs have not formed a JPA) has facilitated expedited processing and common standards between communities. The City of Concord has worked with up to seven other LFAs at one time in this regard.**



Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

As the above information indicates, we are experienced at working with cable providers to see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

The experience of the City of Concord demonstrates that the local franchising process is not an obstacle to competition as shown by the City's efficient grant of a competitive franchise in less than six months and the approval of a franchise transfer in four months, as noted above.

The local cable franchising process has functioned to provide competition, which has brought many benefits to our residents. These benefits include rate relief, improved customer service and access to advanced services. The City of Concord has played a key role in this process by assuring local community needs and interests are met while also expeditiously granting franchises and franchise transfers.

## Conclusions

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For example, the City is required to provide notice to the operator of any alleged franchise violations including failure to meet customer service standards and the operator is provided ample opportunity to cure prior to legislative or judicial review and action.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived, whether requested by the local government or offered by the cable operator, once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties while, of course, respecting Applicable Law.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

**The City of Concord therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.**

Respectfully submitted,

City of Concord, California



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